

## REMARKS

Reconsideration of this application in view of the following remarks is respectfully requested.

### STATUS OF CLAIMS AND SUPPORT FOR AMENDMENTS

Upon entry of this amendment, claims 1-24 will be pending in this application. Claims 6 and 14 have been indicated to be allowable if rewritten in independent form to incorporate all of the limitations of the claims from which they depend. For the reasons given below, Applicants respectfully submit that claims 1-5, 7-13, and 14-24 are also allowable.

### REJECTION UNDER 35 U.S.C. § 101

At page 3 of the Office action dated April 23, 2008, the Examiner has rejected claims 17-24 under 35 U.S.C. § 101 as directed to non-statutory subject matter. Applicants respectfully traverse this rejection based on the remarks below.

In his rationale supporting this rejection, the Examiner states:

Normally, the claim would be statutory. However, the specification at paragraph [0113] defines or exemplifies the claimed computer readable medium as encompassing statutory media such as a "ROM", "hard disk", etc, as well as ***non-statutory*** subject matter such as a "line by means of a network such as the Internet".

Office action dated April 23, 2008 at page 3 (emphasis in original). The Examiner then cites *In re Nuijten* for the proposition that "a transitory, propagating signal . . . is not a 'process, machine, manufacture, or composition of matter.'" See Office action dated April 23, 2008. From this, the Examiner concludes that:

Because the full scope of the claim as properly read in light of the disclosure appears to encompass non-statutory subject matter (i.e., because the specification defines/exemplifies a computer readable medium as a non-statutory signal, carrier, wave, etc.) the claim as a whole is non-statutory.

Office action dated April 23, 2008 at page 3.

The Examiner's reasoning and rejection are incorrect for a number of reasons. First, the Examiner is incorrect that paragraph [0113] defines the term "computer readable medium" as including non-statutory subject matter. Paragraph [0113] states, in pertinent part:

In case of realizing this invention by means of a computer program, the specified program for operating the image processing device can be provided by a computer readable recording medium such as a flexible disk or a CD-ROM, or can be provided on a line by means of a network such as the Internet. In this case, the program recorded on a computer readable recording medium is normally transferred to and stored on a ROM, hard disk or other storage units.

(emphasis added).

The normal rules of English grammar indicate that the underlined portion describes two different methods for providing the computer program for operating the image processing device. In one method, the computer program is provided on a computer readable medium. Examples of such a computer readable medium include a flexible disk or a CD-ROM. In the second method, the computer program is provided online, using a network such as the Internet. Moreover, in either method, the program is transferred to and stored on a ROM, hard disk, or other storage unit. Paragraph [0113], when properly interpreted, does not define the term "computer readable medium" to include a transitory, propagating signal. It merely indicates that the computer program can be provided to the image processing device via more than one mechanism. This can be (1) providing the computer program directly on a computer readable medium, or (2) providing the computer program online (where logic dictates it is also stored on a computer readable medium, such as a storage device on a network server).

Applicants respectfully submit that, when paragraph [0113] of the specification is correctly construed, it is clear that it does not define the term "computer readable medium" to include non-statutory subject matter, and that claims 17-24 are indeed statutory. Accordingly, this rejection should be withdrawn.

#### OBVIOUSNESS REJECTIONS

A. Claims 1 and 8 over Tanaka in view of Hoffman et al.

At pages 4-6 of the Office action, the Examiner has rejected claims 1 and 8 under 35 U.S.C. § 103(a) as obvious over U.S. Patent Publication No. 2002/0003897 (Tanaka) in view of U.S. Patent Publication No. 2004/0169664 (Hoffman et al.).

Applicant respectfully traverses this rejection for the reasons given below.

The Examiner relies upon the abstract of Tanaka as allegedly teaching the attribute recognizing part for recognizing at least attributes concerning whether each extracted image area is a filled closed area or an unfilled closed area. However, the Examiner admits that the abstract instead discloses an enclosed area color detection unit that detects the colors inside the enclosed area. See Office action dated April 23, 2008 at page 4.

The enclosed area color detection unit is described in more detail in paragraphs [0141] and [0142] of Tanaka. Paragraph [0141] of Tanaka states, in pertinent part:

In the enclosed area color detection process, when the enclosed color detection unit 33 receives the group of vectors that are recognized as an enclosed area surrounded by line graphics, the coordinate is calculated for an internal point reached by advancing perpendicular to the vector from a point on the vector in the aforementioned manner for each vector (line segment) at the step S4750 of FIG. 6 (refer to FIG. 8) (S4655). The color information is obtained for the positions corresponding to the internal points from the input image data (S4720). A histogram is generated for the color information for the total length of the vector

for each vector (S4780). The most frequent value is detected as the color information of the enclosed area (S4785). This makes it possible to handle the color information within the enclosed area as a package (refer to FIG. 15(D)).

(emphasis added). The specification of Tanaka indicates that the purpose of determining the color inside the closed area is not to distinguish a filled closed area from an unfilled closed area, and to use this result to set up an overlaying sequence for each image area. Tanaka makes clear that the purpose of determining the color of the enclosed area is to make it possible to:

handle and store the information concerning the line width and color of the line graphics and the information of the color inside the enclosed area together with the vector data as a package (as one image data file). More specifically, not only the color of a diagram, but also the color inside an enclosed area can be detected and handled with the vector data as a package (as one image data file), so that it can reproduce faithfully not only the line color but also the color inside an enclosed area.

Tanaka, paragraph [0142]. As a result, Tanaka fails to disclose the recognition of an attribute concerning whether an extracted image area is a filled enclosed area or an unfilled enclosed area. In effect, Tanaka treats all enclosed areas as filled enclosed areas. However, the distinction between a filled closed area and an unfilled closed area is important in determining the overlaying sequence according to Applicant's claims, because a filled closed area can hide the image below it. See paragraph [0007] of the present published application.

In addition to this deficiency, the Examiner admits that Tanaka fails to teach: (1) a file producing part for producing a file by synthesizing said image areas based on the positional information recognized by the positional information recognizing part; and (2) a sequence setting part for setting up overlaying sequence for each image area in accordance with the recognition result of the attribute recognizing part.

See Office action dated April 23, 2008 at pages 4-5. In an attempt to cure these deficiencies in Tanaka, the Examiner turns to Hoffman et al., alleging that:

Hoffman et al. teaches a file producing part for producing a file by synthesizing said image areas based on the positional information recognized by said positional information recognizing part (para. [0006] and [0059]) wherein said file producing part produces the file by overlaying said image areas in accordance with the overlaying sequence set up by said sequence setting part (para. [0059]); sequence setting part for setting up overlaying sequence for each image area in accordance with the recognition result (formatting properties) of said attribute recognizing part (claim 1 (c) and claim 4, para. [082]).

Office action dated April 23, 2008.

However, the "formatting properties" upon which the Examiner relies are disclosed by Hoffman et al. to "include style 50 and size 51 which properties identify the style name and size of the overlay elements 30 in the overlay sequence." Hoffman et al., paragraph [0061]. Moreover, the description in paragraph [0082] of Hoffman et al. of the calculation of a pixel color value does not appear to relate to any determination of overlay sequence. Neither Tanaka nor Hoffman et al. teach or suggest the use of color value as a mechanism for recognizing whether an extracted image area is a filled area or an unfilled area. Moreover, neither Tanaka nor Hoffman et al. disclose using such a determination as a basis for setting an overlaying sequence. Accordingly, Applicants respectfully submit that a worker having ordinary skill in the art would have no reason to combine the teachings of Tanaka with those of Hoffman et al. in the way that the Examiner has suggested. For this reason alone, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness.

Moreover, even if the teachings of the references were combined, this would not result in the use of the color value of one or more filled closed areas of Tanaka to

determine whether an extracted area is filled or unfilled, and would not result in the use of this determination to set up an overlaying sequence. Instead, Applicants submit that one of ordinary skill in the art, put in view of both the Tanaka and Hoffman et al. disclosures, would continue to use the color value determination of Tanaka in a manner similar to that disclosed by Tanaka, i.e., to "handle and store the information concerning the line width and color of the line graphics and the information of the color inside the enclosed area together with the vector data as a package (as one image data file)". This is not Applicants' claimed invention, however, for this reason as well, Applicants submit that a *prima facie* case of obviousness has not been established for claims 1, 8, 9, 16, 17, and 24.

For at least the reasons given above, Applicants respectfully submit that the Examiner's rejection should be withdrawn.

B. Claim 2 over Tanaka in view of Hoffman et al. and Bourdev et al.

At page 6 of the Office action dated April 23, 2008, the Examiner has rejected claim 2 under 35 U.S.C. § 103(a) as obvious over Tanaka in view of Hoffman et al., and further in view of U.S. Patent Publication No. 2005/0116963 (Bourdev et al.). Applicants respectfully traverse this rejection for the reasons given below.

The Examiner admits that neither the teachings of Tanaka nor those of Hoffman et al. disclose a sequence setting part that sets up the overlaying sequence to overlay unfilled closed areas in front of filled closed areas. Recognizing this deficiency, the Examiner turns to Bourdev et al., alleging that Bourdev et al. teaches overlaying unfilled closed areas in front of filled closed areas in paragraph [0025]. From this, the Examiner concludes that it would have been obvious to one having ordinary skill in the art to overlay unfilled closed areas in front of filled closed areas in

the device allegedly taught by the combined teachings of Tanaka and Hoffman et al.. The Examiner asserts that "the suggestion/motivation for doing so would have been that to exhibit transparency instead of covering another object when object is unfilled, citing Bourdev et al. at paragraph [0025]. See Office action dated April 23, 2008 at page 6.

First, Boudev et al. does not cure the deficiencies of Tanaka and Hoffman et al. described above. Accordingly, even if the teachings of Boudev et al were combined with those of Tanaka and Hoffman et al., the invention recited in claim 2 would not be obtained.

Second, Boudev et al. does not teach overlaying unfilled closed areas in front of filled closed areas. Paragraph [0025] of Boudev et al. states:

Instead of completely covering another object, artwork objects can exhibit some transparency. As shown in FIG. 3, when red triangle 14 has some degree of transparency, placing red triangle 14 on top of blue circle 12 produces a mixture of red and blue (e.g., purple) where triangle 14 overlaps circle 12. The more transparent the triangle 14, the more the appearance of the circle 12 dominates the appearance of the shared region 16. In this case, increased transparency of the triangle 14 produces a bluer intersection region 16. Similarly, decreased transparency of triangle 14 produces a redder intersection region 16.

Boudev et al. therefore disclose overlaying a filled region, which is not completely opaque, over another filled region, which is more opaque. This is not a disclosure of overlaying an unfilled region over a filled region as recited in Applicants' claim 2. Thus, for this reason as well, even if the teachings of Boudev et al., paragraph [0025] were properly combined with the teachings of Tanaka and Hoffman et al., the result would not be the invention recited in claim 2.

For at least these reasons, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness of claims 2, 10, and 18 and as a result, this rejection should be withdrawn.

C. Claim 3 over Tanaka, Hoffman et al., Bourdev et al., and Accad

At page 7 of the Office action dated April 23, 2008, the Examiner has rejected claim 3 under 35 U.S.C. § 103(a) as obvious over Tanaka, Hoffman et al., and Bourdev et al., and further in view of U.S. Patent No. 6,330,363 (Accad). Applicants respectfully traverse this rejection for the reasons given below.

The Examiner admits that Tanaka, Hoffman et al., and Bourdev et al. fail to disclose that the sequence setting part sets up the overlaying sequence to overlay line areas in front of filled closed areas. In an attempt to cure this deficiency, the Examiner turns to Accad, alleging that Accad teaches overlaying line areas in front of filled closed areas at column 7, line 60 to column 8, line 10. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to overlay lines in front of filled closed areas by combining this teaching of Accad with those of Tanaka, Hoffman et al., and Bourdev et al. in order to avoid covering lines by filled closed areas. See Office action dated April 23, 2008 at page 7.

First, Accad does not cure the deficiencies of Tanaka, Hoffman et al., and Bourdev et al. described above. Accordingly, even if the teachings of Accad were combined with those of Tanaka and Hoffman et al., the invention recited in claim 3 would not be obtained.

Second, the Examiner has not explained where any of the cited references, including Accad, disclose an attribute recognizing part that recognizes whether each extracted image area is a line area that does not form any closed area. This is



feature recited in claim 3 that does not appear to be disclosed in any of the portions of the prior art cited by the Examiner.

Third, the portion of Accad cited by the Examiner states:

FIG. 4a and FIG. 4b respectively illustrate the schematic separation of the raster data objects into a first raster layer 410 and a second raster layer 420. The first raster layer 410 collects those pixels that are to be subjected to a first compression procedure and the second raster layer 420 collects those pixels that are to be subjected to a second compression procedure. Using the example page 90 shown in FIG. 2, the Type 1 pixels,  $p1(i,j)$  representing mainly graphic objects such as text 92 and line art 94 are retained on the first layer while the Type 2 pixels,  $p2(i,j)$  representing mainly the photo 98 in the heart shape frame 96 are separated onto the second layer. At the same time, the position information of the  $p2(i,j)$  pixels are preserved on the first layer in the form of transparent pixels  $t2(i,j)$  representing a cutout 412. Thus, it is as if all objects originally reside on the first raster layer 410, and then the Type 2 patches associated with the image objects are cut out and placed on the second raster layer 420.

Accad, column 7, line 60 to column 8, line 10 (emphasis added). This portion of Accad, therefore, placing text and line art (Type 1 pixels) in the first raster layer, behind what the Examiner appears to regard as a filled closed area (photo 98), which is placed in the second raster layer. In other words, Accad teaches doing the opposite of what claim 3 recites. Thus, even if Accad were combined with the other three cited references in the manner that the Examiner has suggested, the invention recited in claim 3 would not be obtained.

Applicants respectfully submit that, for at least the reasons given above, the Examiner has failed to establish a *prima facie* case of obviousness for claims 3, 11, and 19, and as a result, this rejection should be withdrawn.

D. Claim 4 over Tanaka, Hoffman et al., and Ohta et al.

At pages 8-9 of the Office action dated April 23, 2008, the Examiner has rejected claim 4 under 35 U.S.C. § 103(a) as obvious over Tanaka and Hoffman et

al., and further in view of U.S. Patent No. 7,054,029 (Ohta et al.). Applicants respectfully traverse this rejection for the reasons given below.

The Examiner asserts that Tanaka teaches an image area extracting part that contains a first extracting part for extracting from image data (a) text image areas (citing Tanaka, Figure 3, S4200), (b) graphic image areas (citing Tanaka, Figure 3, S4400), (c) photographic image areas (citing Tanaka, paragraph [0049]). The Examiner also asserts that Tanaka teaches that the image area extracting part contains a second extracting part for extracting from the extracted graphic image areas (b) areas that are filled closed areas, unfilled closed areas, and line areas that do not form any closed areas (citing Tanaka, Figure 3, S4500, S4600, S4700, and Figures 9-14). The Examiner also asserts that Tanaka teaches an attribute recognizing part that recognizes attributes concerning whether each extracted image area is a text image area, a photographic image area, a filled closed area, an unfilled close area, or a line area (citing paragraph [0049]). See Office action dated April 23, 2008, page 8

The Examiner admits that the neither Tanaka nor Hoffman et al. teach a sequence setting part that sets up the overlaying sequence for each image area of text image areas, photographic image areas, filled closed areas, unfilled closed areas, and line areas in accordance with the recognition results of the attribute recognition part. See Office action dated April 23, 2008, page 8. In an attempt to cure this deficiency, the Examiner cites Ohta et al., stating:

Ohta et al. teaches that said sequence setting part sets up the overlaying sequence for each image area of text image areas, photographic image areas, filled closed areas, unfilled closed areas, and line areas in accordance with the recognition results of said attribute recognizing part (Fig 2A 112, Fig. 5, Fig. 6).

Office action dated April 23, 2008, page 8. From this, the Examiner concludes that it would have been obvious to one of ordinary skill in the art to set up the overlaying sequence for each image area of text image areas, photographic image areas, filled closed areas, unfilled closed areas, and line areas in the device allegedly taught by the combined teachings of Tanaka and Hoffman et al. The alleged suggestion/motivation for doing so is to "optimize image processing by identifying / segmenting the image layer so that they can be processed individually and then recombined into a desired order to achieve a better output image." See Office action dated April 23, 2008 at page 9.

First, Ohta et al. does not cure the deficiencies of Tanaka and Hoffman et al. noted above.

Second, the portions of Tanaka cited by the Examiner do not support the assertion that Tanaka teaches an image area extracting part that is separated into a first extracting part for extracting text image areas, graphic image areas, and photographic image areas, and a second extracting part for extracting filled closed areas, unfilled closed areas, and line areas that do not form any closed areas.

Paragraph [0049] of Tanaka, cited by the Examiner states:

The area-identifying unit 19 identifies character areas, graphic areas, and photograph areas of a document image scanned by the scanner engine 3 and divides the image data into those areas. The character recognition unit 21 recognizes character images contained in the character area and converts them into character code data. The vector conversion unit 23 extracts line graphics that include lines and/or curves contained in the graphic area, and generates vector data along the line graphics. The vector conversion unit 23 also contains a line width-detecting unit 25. The line width-detecting unit 25 detects information concerning the line width of the line graphics.

(emphasis added). The extraction of enclosed areas is handled by a separate unit, described in paragraph [0050] of Tanaka:

The enclosed area-extracting unit 27 extracts one or more enclosed areas surrounded by the extracted line graphics. The color-detecting unit 29 detects not only the information concerning the colors of the line graphics but also the information concerning the colors inside the enclosed areas surrounded by the extracted line graphics, so that the detected color information can be handled as one image data file with the vector data. Specifically, the color-detecting unit 29 consists of a vector color detecting unit 31 that detects the colors of the line graphics and an enclosed area color detection unit 33 that detects the colors within the enclosed areas.

(emphasis added). These portions of Tanaka therefore indicate that image data is first separated into text, graphic, and photographic areas. The graphic area data is subjected to processing by a vector conversion unit that extracts lines and curves, and generates vector data for these lines or curves. Enclosed areas are extracted from the extracted line graphics by unit 27 of Tanaka, and the color thereof, as well as the color of the enclosing lines, is detected by color detecting unit 29. Information about the color of the lines, the color of any enclosed areas, and the width of the lines is stored and handled as a single file, as disclosed in paragraph [0142] of Tanaka and described above.

This is different from claim 4; no extraction from the graphic image areas of filled closed areas, unfilled closed areas, and line areas that are not closed is evident from the cited portions of Tanaka. Moreover, no recognition of these different areas by an attribute recognizing part is evident. To the contrary, area identifying unit 19 of Tanaka is disclosed as identifying whether the image data is a character area, a graphic area, or a photographic area. No further identification is disclosed to be performed by this structure. Thus, contrary to the Examiner's assertions, Tanaka

does not disclose the features of the image area extracting part or the attribute recognizing part recited in claim 4.

Third, the cited figures of Ohta et al. do not disclose a sequence setting part that sets up an overlaying sequence for each image area in accordance with the recognition results of the attribute recognizing part. Figure 2A of Ohta et al. described what Ohta et al. considered to be prior art, and not part of the Ohta et al. invention. Figure 5 of Ohta et al. merely shows a rendered document image, and does not disclose any overlaying sequence, or any description of how that overlaying sequence was obtained. Figures 6A to 6F of Ohta et al. are described by Ohta et al. as follows:

FIG. 6A depicts a color natural image object, and FIG. 6B depicts only a monochrome natural image object. Likewise, FIG. 6C depicts a color character object, FIG. 6D a monochrome character object, FIG. 6E a color graphic object, and FIG. 6F a monochrome graphic object. When all of these objects are superposed on each other, the document shown in FIG. 5 is obtained.

Ohta et al., column 6, lines 32-38.

The Examiner has not explained how these drawings, which depict separate objects that are superposed to form a document, constitutes a disclosure of "a sequence setting part [that] sets up the overlaying sequence for each image area of text image areas, photographic image areas, filled closed areas, unfilled closed areas, and line areas in accordance with the recognition results of [an] attribute recognizing part" as recited in claim 4. As a result, even if the reference teachings of Ohta et al. were combined with those of Tanaka and Hoffman et al., the invention of claims 4, 12, and 20 would not be obtained, and the Examiner's rejection should be withdrawn.

E. Claim 5 over Tanaka, Hoffman et al., and Ohta et al.

At pages 9-10 of the Office action dated April 23, 2008, the Examiner has rejected claim 5 under 35 U.S.C. § 103(a) as obvious over Tanaka and Hoffman et al., and further in view of Ohta et al.. Applicants respectfully traverse this rejection for the reasons given below.

The Examiner admits that:

Tanaka in view of Hoffman et al. and further in view of Ohta et al. does not teach that said sequence setting part sets up the overlaying sequence to overlay text image areas in front, filled closed areas and photographic image areas in back, and unfilled closed areas and line areas in between them.

Office action dated April 23, 2008 at page 9. Despite this admission, the Examiner concludes that claim 5 is obvious, stating:

It is clear that person of ordinary skill in the art to think text as most important information, so that overlay text image areas in front, to avoid blocking line or unfilled closed area by photographic image or filled closed area, overlay lines and unfilled closed area in the middle and photographic image and filled closed area in back.

Office action dated April 23, 2008 at pages 9-10.

First, Applicants disagree that it is clear that those of ordinary skill in the art would think that text is more important than other types of information, and note that the Examiner has not cited any support for such an assertion. For example, the Examiner has not cited any reference that states this assertion, the Examiner has not made of record any personal knowledge that this assertion is true in the form of a declaration under 37 C.F.R. § 1.104(d)(2), and the Examiner has not shown this assertion to be "capable of instant and unquestionable demonstration as being well-known," such that taking official notice of the assertion is proper under MPEP

§ 2144.03(A). As a result, the Examiner's assertion is not an appropriate basis for rejecting claim 5.

Second, even if the Examiner's assertion is correct, that text may be "more important" does not lead one of ordinary skill in the art to overlay a text image area over areas for other types of images. The Accad reference, cited by the Examiner in rejecting claim 3, does not overlay text image areas over photographic image areas, for example.

Applicants respectfully submit that, for at least the reasons given above, the Examiner has failed to establish a prima facie case of obviousness of claims 5, 13, and 21, and that this rejection should be withdrawn as a result.

F. Claim 7 over Tanaka, Hoffman et al., and Ohta et al.

At page 10 of the Office action dated April 23, 2008, the Examiner has rejected claim 7 under 35 U.S.C. § 103(a) as obvious over Tanaka and Hoffman et al., and further in view of Ohta et al.. Applicants respectfully traverse this rejection for the reasons given below.

The Examiner asserts that Tanaka teaches a vector transforming part for transforming image data in graphic image areas into vector data (citing Figure 4). The Examiner also asserts that Tanaka discloses a closed area extracting part for extracting closed areas based upon the connection relation of a plurality of vector data (citing Figure 5A), a color information judging part for judging whether color information of internal points and external points of the extracted closed areas are the same (citing Figure 6, S4710), and a filled closed area detecting part for detecting filled closed areas based on the judgment results of the color information judging part (citing Figure 6, S4750).

With respect to Figure 6, Tanaka states:

FIG. 6 is a flowchart showing the contents of color detection procedures shown in step S4700 of FIG. 3.

At the step S4710, the vector color detection unit 31 detects the color of the line graphics obtained at the step S4500. At the step S4750, the enclosed area color detection unit 33 detects the color in the enclosed area extracted at the step 4600, i.e., the color in the enclosed area surrounded by the line graphics converted into vectors. To be able to detect the information concerning the color of an enclosed area surrounded by line graphics is one of the features of the invention.

Tanaka at paragraphs [0116] - [0117]. Applicants respectfully submit that the process disclosed by Tanaka does not involve a color information judging part that judges whether the color information of internal points and external points of an enclosed area are the same, and detecting filled closed areas based on this judgment. Instead, Tanaka first detects the color of line graphics that have already been obtained, and then detects the color in of any area enclosed by the line graphics. As indicated in paragraph [0142], this is done to combine the information on line color and color inside an enclosed area into one image data file. The Examiner has not identified any disclosure in Tanaka that suggests that a determination of color inside and outside an enclosed area is made, and that this determination is used to detect whether the closed area is filled or unfilled.

Applicants respectfully submit that, for at least the reasons given above, the Examiner has failed to establish a prima facie case of obviousness of claims 7, 15, and 23, and accordingly, this rejection should be withdrawn.



Applicants gratefully acknowledge the Examiner's indication that claims 6 and 14 are directed to allowable subject matter. In light of the comments above, Applicants respectfully submit that all of the claims are in condition for immediate allowance, and an early notification to that effect is respectfully requested.

Respectfully submitted,

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